

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR08-107

MARY K. WARREN,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

Opinion Delivered 27 August 2008

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT,
[NO. CR-2002-429-2]

THE HONORABLE JAMES SCOTT
HUDSON, JR., JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

In 2003, Mary Warren was convicted of theft of public benefits. The circuit court sentenced her to three years' probation. About a month before her probation ended in 2006, the State filed a petition to revoke for her alleged failures to report and pay court-ordered financial obligations. The circuit court granted the State's petition on both grounds. Warren challenges the revocation on each ground as being clearly against the preponderance of the evidence.

We agree with Warren on the failure-to-report ground. The State's petition alleged that she failed to report for several months in late 2005 and early 2006. At the revocation hearing, a probation officer—not Warren's regular officer—testified that Warren had missed several reports. But that officer also testified that she had no way of knowing at that moment when Warren was actually told to report and failed to do

so. Moreover, the record on appeal does not contain a copy of Warren's probation conditions or schedule of report dates, which could have provided the missing information. We therefore conclude that the State failed to prove this ground by a preponderance of the evidence. *Richardson v. State*, 85 Ark. App. 347, 350, 157 S.W.3d 536, 538 (2004).

We nonetheless affirm Warren's revocation because she failed to pay financial obligations under the judgment. The State alleged in its petition—filed about one month before Warren's probation ended—that Warren owed fines, restitution, and court costs totaling \$2,339.00, that she was to pay those obligations at \$65.00 a month, and that she had paid nothing. At the revocation hearing, the State requested that the court take judicial notice of Warren's probation conditions. The court did so, and Warren did not object—thus conceding the terms of her probation. Though the conditions are not in the record, the officer testified that Warren had received, read, and initialed them. The probation officer also testified that Warren had paid none of the money she owed. Warren did not explain why. Given that Warren had made no payments at all one month before her three-year probation ended, and the absence of evidence about why she failed to pay, we cannot say that the circuit court's decision on this ground is clearly against the preponderance of the evidence. *Richardson*, 85 Ark. App. at 350, 157 S.W.3d at 538. The State needed to prove only one ground to revoke Warren's probation. *Ibid.* We therefore affirm the revocation.

BIRD and GLOVER, JJ., agree.